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APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
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09/283,135 03/31/99 BIRX

D EXAMINER 16227/048

MMC2/1121

ART UNIT	PAPER NUMBER
SHINGLETON, 6	

RONALD J. KRANSORF
WOLF GREENFIELD & SACK
600 ATLANTIC AVENUE
BOSTON MA 02210

DATE MAILED 7

11/21/00

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

OFFICE ACTION SUMMARY

☒ Responsive to communication(s) filed on 9-5-2000

☐ This action is FINAL.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire Three month(s), or ~~thirty days~~, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-32 are pending in the application.

Of the above, claim(s) 24 is/are withdrawn from consideration.

☒ Claim(s) 30-32 is/are allowed.

☒ Claim(s) 1, 2, 10-13, 21-23, 25, 29 is/are rejected.

☒ Claim(s) 3-9, 14-20, 26-28 is/are objected to.

☐ Claim(s) are subject to restriction or election requirement.

Application Papers

☒ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number)

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received:

☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of Reference Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s).

☐ Interview Summary, PTO-413

☒ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

—SEE OFFICE ACTION ON THE FOLLOWING PAGES—

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Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 250 words. It is important that the abstract not exceed 250 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

The abstract of the disclosure is objected to because the abstract exceeds 250 words.

Correction is required. See MPEP § 608.01(b).

Applicant's election with traverse of Group I in Paper No. 5 is acknowledged. The traversal is on the ground(s) that since claim 3 contain subject matter of the non-elected invention that the search required for this claim is also required for that the non-elected invention. This is not found persuasive because the same search is not required as claim 3 is dependent upon claim 1 which does not rely on the details of the non-elected invention for patentability as indicated in the restriction requirement.

The requirement is still deemed proper and is therefore made FINAL.

This application has been filed with informal drawings which are acceptable for examination purposes only. Formal drawings will be required when the application is allowed.

Claims 1, 2, 10-13 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-25 of U.S. Patent No. 6,084,198. Although the conflicting claims are not identical, they are not patentably distinct from each other because

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the claims of the present application differ my merely wording that describes essentially the same structure and the use of inherent materials that must be present in order for the claims of U. S. Patent No. 6,084,198 to make sense. In particular, the claims of the instant application recites solid state simulated RF source and the claims of Patent # 6,084,198 recites a RF source. Solid state RF sources are common place and thus the claim language patented in 6,084,198 is seen as including such, but at the very least the addition of such would be an obvious feature to one of ordinary skill in the art at the time the invention was made. As it relates to the naming "simulated", this is merely a name for the same structure and does not convey any patentably distinguishing structure over that which has claimed in Patent # 6,084,198. As it relates to the use of an insulator for the plasma initiator electrodes, this is an obvious addition to that of Patent # 6,084,198 as such a structure is absolutely necessary so that the initiator electrodes do not short to the column. As such the claimed invention of Patent # 6,084,198 is seen as inherently including such structure, however, at the very least the inclusion of the insulator as set forth by claims 10-12 of the instant application would have been an obvious addition to that of Patent # 6,084,198 as such structure is necessary in order for the initiator electrodes not to short to the column. Refractory metal is a common electrode material and thus obvious to one of ordinary skill in the art addition to the claims that does not present a patentable distinction over the claims of Patent # 6,084,198

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Claims 21-23, 25, 29 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-38 of U.S. Patent No. 5,866,871. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the present application differ by merely wording that describes essentially the same structure. In particular the claimed invention of the instant applicant recites an inherent characteristic of the structure claimed in Patent # 5,866,871. Namely, the production of a high voltage field. Furthermore, the presently claimed invention includes an insulator to hold the initiation electrodes. Such is an inherent structure in the claimed invention of Patent 5,866,871 as it is necessary so as to prevent shorting of the initiation electrodes. The inclusion of such would not present a patentable feature over the claimed invention set forth by 5,866,871 since the inclusion would have been obvious to one of ordinary skill for the reasons given above. Refractory metal is a common electrode material and thus obvious to one of ordinary skill in the art addition to the claims that does not present a patentable distinction over the claims of Patent # 5,866,871.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Burton et al. 5,924,278 shows the general state of the art as it concerns the use of an ignitor with a plasma apparatus.

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Claim 3-9, 14-20 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 30-32 are allowable over the prior art of record for the reasons given above.

The prior art of record fails to disclose or suggest a combination that includes the specifically claimed structure as set forth by claims 3-9, 14-20.

Any inquiry of a general nature or relating to the status of this application should be directed to the group receptionist whose telephone number is (703) 308-0956. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Michael Shingleton whose telephone number is (703) 308-4903.

Shingleton
November 16, 2000

Michael B Shingleton
MICHAEL B SHINGLETON
GROUP RECEPTIONIST
GROUP ART UNIT 2817